



**OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA
BOARD OF CEMETERIANS**

IN THE MATTER OF

Floral Memory Gardens LLC

Respondent.

Case Number: ENCE-0389

NOTICE OF OPPORTUNITY FOR HEARING

**TO: Floral Memory Gardens LLC
120 Old Pretoria Road
Albany, Georgia 31707**

PLEASE TAKE NOTICE that the Secretary of State of the State of Georgia ("Secretary") by and through the State Board of Cemeterians ("Board") intends to issue the Proposed Order ("Order") attached hereto to **Floral Memory Gardens LLC** ("Respondent," "FMG," or "Cemetery") pursuant to the Georgia Cemetery and Funeral Services Act of 2000, O.C.G.A. § 10-14-1, *et seq.* ("Act"). The Order is being proposed based on information known to the Secretary at the time this Notice of Opportunity for Hearing was issued and may be amended or modified at any time prior to its entry.

Pursuant to O.C.G.A. § 10-14-23, Respondent is hereby notified that within ten (10) days after receipt of a request for a hearing in a record from Respondent, this matter will be scheduled

for a hearing unless another date and time is otherwise agreed to by the parties. If Respondent does not request a hearing and none is ordered by the Secretary within ten (10) days after the date of service of this Order, this Order will become final as to Respondent by operation of law. If a hearing is requested or ordered, the Secretary, after notice of opportunity for hearing to Respondent, may modify or vacate this Order or extend it until final determination.

1. GROUNDS. The grounds for the issuance of this Order are that Respondent engaged in conduct in violation of O.C.G.A. § 10-14-17.

2. REQUEST FOR HEARING. Pursuant to O.C.G.A. § 10-14-23, this Order may be entered by the Secretary unless Respondent requests a hearing within ten (10) days of receipt of this notice. A request for hearing may be delivered to the attention of Noula Zaharis, Director, Office of the Secretary of State, Securities and Charities Division, 2 Martin Luther King Jr. Dr., SE, Suite 317 West Tower, Atlanta, GA 30334 or by electronic mail at nzaharis@sos.ga.gov.

3. PROCEDURE FOR REQUESTING A HEARING. If the Respondent requests a hearing, the request for hearing must be in writing and contain the following information as required by Rule 590-3-1-.05 of the Rules of Office of Secretary of State (hereinafter, the “Rule” or “Rules”):

- a title which indicates the nature of the proceedings;
- the complete name and address of the person or persons on whose behalf the request is filed;
- the name and address of all other persons known to have a legal interest in the proceedings;
- if the person or persons on whose behalf the request is filed are represented by counsel, the name and address of counsel;
- a clear and concise statement of the facts upon which the contested case arises;
- a prayer setting forth the relief sought; and
- a statement of the grounds upon which the person contends he is entitled to the relief sought.

4. SCHEDULING OF HEARING. If requested, a hearing will be scheduled before a Hearing Officer appointed by the Secretary, the ultimate decision maker in this matter, in no less than fifteen (15) days but not earlier than five (5) days after the request is made, unless otherwise agreed to by the parties.

5. ISSUES TO BE ADDRESSED. If a hearing is requested, the issues to be addressed are set forth in the attached Order that is incorporated herein by reference and made a part of this Notice of Opportunity for Hearing.

6. CONTESTED CASES. This is a contested case proceeding and pursuant to the Rules it shall be conducted as expeditiously as possible, with regard to the rights of the parties, and in a manner to enable the parties to obtain relevant information needed for preparation of the case to the extent that such disclosure is authorized or required by law.

7. LEGAL AUTHORITY AND JURISDICTION. This Notice of Opportunity for Hearing is issued pursuant to O.C.G.A. § 43-17-23, Rule 590-3-1-.05, and O.C.G.A. § 50-13-1 *et seq.* (The Georgia Administrative Procedure Act).

8. INFORMAL CONFERENCE. Respondent may request an informal conference with the Division Director pursuant to Rule 590-3-1-.05. The receipt of a written request for an informal conference will toll, until the date that such conference is scheduled, the running of the time for requesting and setting a hearing. A request for hearing that does not contain the required information as outlined above will be treated as a request for an informal conference. Further information regarding an informal conference may be obtained by contacting Noula Zaharis at (470) 312-2787 or nzaharis@sos.ga.gov.

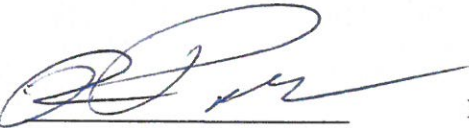
9. RIGHTS OF PARTIES. The parties to this matter shall have all of the rights provided for

in the Act, the Rules and the Georgia Administrative Procedure Act, including but not limited to the following:


- To subpoena witnesses and documentary evidence;
- To secure testimony by deposition or interrogatories if authorized or directed by the Hearing Officer;
- To be represented by legal counsel; and
- To respond and present evidence on all issues involved.

SO ORDERED this 20th day of May 2021.

BOARD OF CEMETERIANS

By: 
Richard Parker
Chairman

**BRAD RAFFENSPERGER
SECRETARY OF STATE**

By: 
Nouta Zaharis
Director
Securities and Charities Division



**OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA
BOARD OF CEMETERIANS**

IN THE MATTER OF

Floral Memory Gardens LLC

Respondent.

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Case Number: ENCE-0389

ORDER TO CEASE AND DESIST AND IMPOSITION OF CIVIL PENALTY

This matter comes before the Secretary of State of the State of Georgia ("Secretary") by and through the Board of Cemeterians ("Board") pursuant to the authority granted in O.C.G.A. § 10-14-14, *et seq.* of the Georgia Cemetery and Funeral Services Act of 2000, as amended ("Act"). Whereas, the Secretary undertook an investigation into the acts and practices of Floral Memory Gardens LLC. ("FMG," "Respondent," or "Cemetery").

Based on the investigation, the Secretary has found grounds to conclude that Respondent may have engaged in acts or practices constituting violations of the Act. The Secretary has determined it is in the public interest to issue this Order.

Based upon information obtained during the investigation, the Secretary finds as follows:

FINDINGS OF FACT

1. FMG is located at 120 Old Pretoria Road, Albany, Georgia 31707.
2. FMG is registered with the Securities and Charities Division ("Division") of the Office of the Georgia Secretary of state as a Perpetual Care Cemetery pursuant to O.C.G.A. § 10-14-3(28). FMG has been registered with the Division since August 6, 2011.

3. FMG lists its Perpetual Care Trust address as 3600 Horizon Blvd, Suite, 100, Feasterville Trevose, Pennsylvania 19053. FMG lists Diana Burkholtz as its Owner/Manager, as well as its Director of Trust.

4. On April 12, 2021, the Securities and Charities Division (“Division”) sent an inspector from the Secretary’s office to inspect the site and report on the condition of FMG’s care and maintenance. The inspector took three hundred thirty-six (336) photos (“Photo(s)”) of the Cemetery and submitted a questionnaire to FMG to address the inspector’s findings. The inspector’s findings are described in detail below.

a. Grounds

5. The inspector found the grounds in very poor condition. The inspector observed many barren areas in the grounds where no grass grew. Further, the inspector did not see any grass seed or hay on barren areas of the ground, and stated that few barren areas had sod. The inspector stated that these barren areas appeared to be largely due to sandy soil ill-suited to the growth of grass. Further, the inspector observed that what few areas did have sod, appeared to be brown in color and did not appear to have been recently placed.

6. The inspector also reported various areas in the grounds where the grass was overgrown and in need of cutting. Further, the inspector stated that weeds were “rampant” throughout the entirety of the grounds.

7. The inspector also reported damage caused by vehicles and heavy equipment stating that there were sporadic ruts, both old and new, present on the grounds. The inspector observed rutted areas in the grounds, which he stated appeared to have been created by the stabilizer arm of a backhoe. The inspector reported other areas of the grounds bearing track marks, indicating damage caused by heavy equipment traveling over the grounds.

8. The inspector also observed minor amounts of trash and windblown flowers in various areas.

9. The Photos provided by the inspector show the grounds in an abysmal condition. The Inspector provided one hundred fifty-one (151) Photos of the grounds. Photos show enormous areas of barren and bare grass to the point that, for certain subdivisions of the Cemetery, the vast majority of the grounds contain no grass at all. Further, these barren areas contain no suggestion of restorative efforts, such as grass seed, hay, or sod. These areas contain soil that is so sandy that no reasonable person could expect that grass could grow out of it.

10. Photos show that in the few areas of the Cemetery's grounds that do bear grass, the grass is overgrown and full of weeds. In fact, the Photos show that for at least certain subdivisions of the Cemetery's grounds, weeds outnumber grass.

11. The inspector provided five (5) Photos that show large areas of damaged grounds bearing deeply rutted track marks, indicating that FMG allowed heavy machinery to cut across the grass rather than travel along the Cemetery's road system. Many of these track marks show no sign or suggestion of grass re-growing, and Photos do not show evidence of reparative efforts aimed at restoring damage caused by tracks. Several Photos shows these track marks running through graves and markers.

12. The inspector provided eight (8) Photos that show old and discarded flowers littered throughout the Cemetery's grounds.

b. Graves

13. The inspector found the gravesites in appallingly poor condition. The inspector observed sinking and settling in many of the graves. Further, the inspector observed that many graves were covered in barren topsoil with no grass, and many graves appeared to have been barren for a period of at least years. The inspector did not observe any grass seed or hay for new growth on any of these graves, and stated that very few appeared to bear sod.

14. The Photos reflect the inspector's findings and show that fill dirt covering graves are comprised mostly of soil with few rocks. Many of these graves, however, are not fresh graves and do not show any indication of grass growing or of efforts to grow grass, such as grass seed, hay, or sod. In fact, Photos show no less than eight (8) graves from 2020, one (1) grave from 2016, one (1) grave from 2013, one (1) grave from 2006, one (1) grave from 2000, and one (1) grave from 1977 covered with grassless topsoil with no evidence of any restorative efforts, such as laying grass seed or sod, indicating extensive neglect for the care and maintenance of graves.

15. The Photos also show that the few graves that do contain sod do not have fresh, green sod. Rather, the grass on every sodded grave appears to be brown and lifeless. In fact, at least one (1) sodded grave appears to have large patches that have died completely, showing barren and sandy soil.

16. Further, the Photos show a large degree of sinking in numerous graves. For example, several photos show a grave that appears to have collapsed in on itself. Other Photos show graves that have sunken to such a severe extent that the inside borders of the graves are clearly discernable.

c. Headstones, Markers, and Monuments

17. The inspector reported a sundry of problems related to the conditions of headstones, markers, and monuments. The inspector observed many markers that appeared to unlevel or sinking. Further, the inspector noted that many markers were broken or damaged.

18. The inspector also observed that many markers were obscured by overgrown with grass and weeds, which the inspector described as a “rampant issue,” as well as chronic soiling and staining of markers. The inspector stated that based on the dates on the markers, these overgrown and soiled makers appear to have been neglected for years.

19. Most alarmingly, the inspector reported numerous graves without markers of any kind, permanent or temporary, stating that he believed no less than thirty (30) graves did not bear any kind of identifier at all, be it a marker, headstone, or sign. Further, the inspector reported several uninstalled markers between the Cemetery’s office and the maintenance area of the Cemetery’s grounds.

20. Photos provided to the Division support the inspector’s findings. The inspector provided seventy-one (71) Photos that display unlevel markers showing various degrees of sinking.

21. Other Photos demonstrate markers and headstones that are damaged or in a state of disrepair. Many Photos show markers that broken down the middle with the name plates on top bent and curled as if crushed by a heavy object. Indeed, several photos show track marks leading to markers or directly over markers, indicating that FMG allowed vehicles or heavy equipment to drive directly over markers.

22. Other Photos show markers that appear to be soiled or obscured due to the negligence of FMG’s maintenance staff. Many photos contain markers that are caked with dirt and mud so that the names on them are not fully legible. At least three (3) photos show markers that are so obscured by dirt and mud that the names on the markers are almost entirely obscured.

23. Most egregiously, many Photos show graves for which markers are either not installed or not present at all. While some graves appear to have temporary markers in place, no less than nine (9) Photos appear to show graves with no markers or headstones installed.

d. Roadways

24. The inspector reported a number of issues with the condition of the Cemetery’s road system. The inspector observed cracks along the roads out of which grew grass and weeds, particularly along the edges of the roads. The inspector also observed potholes and soiled asphalt

conditions in the road system, and that the general state of the roads appeared to need resurfacing, as past efforts either did not hold, or occurred so long ago that the roads have worn over time due to weathering. Lastly, the inspector observed evidence of possible drainage issues resulting in current and prior standing water and staining on the roadways.

25. The Photos support the inspector's findings. Throughout the Cemetery, roads show signs of time-related damage, such as stress fractures and erosion. The Photos also show numerous shallow potholes in the road system that has not been addressed with any reparative measures, such as gravel, quick-drying cement, or new asphalt.

26. Other Photos show numerous weeds growing in cracks in the roadways and sidewalks, particularly along the sides of the roads.

e. Questionnaire

27. As a part of his inspection, the inspector submitted a questionnaire to FMG prepared by Division. The questionnaire requested information regarding what systems, if any, FMG has in place for the purpose of processing complaints by the Cemetery's visitors as well as what systems, if any, the Cemetery uses for logging and addressing care and maintenance work orders.

28. On April 16, 2021, FMG provided a sworn statement in response to the Division's questionnaire. In its response, FMG stated that "has completed a [sic] lot of work recently on the Cemetery." Further, FMG stated that all outstanding work orders had been completed except those waiting for deliveries. FMG further stated that all temporary markers had been placed.

29. FMG stated that it does not have a written procedure for addressing customer complaints, but that complaints are addressed "as soon as possible". FMG further stated that "[c]omplaints are received by family service administrators and if they can address the issue, they will meet with the family to fix it."

30. FMG stated that if a work is required to address the complaint, the administrators write a work order that is logged, and a copy is given to maintenance. If maintenance can address the complaint with materials already on the property, the issue is addressed within 3-7 work days. If materials need to be ordered to address the work order, the issue is addressed within 3-7 work days of the necessary materials' delivery to the Cemetery. Once the work is completed, maintenance signs the work order and returns it to the family service counselor or administrator who received the complaint, who then contacts the original complainant to inform them that their complaint has

been addressed. A copy of the signed order is then saved in the family's file and logged into the Cemetery's computer system to show the work is complete.

31. In response to the track marks through the Cemetery's grounds, FMG states that these ruts were caused by vehicle activity from visitors, and that FMG has chained off these areas to prevent further damage and has begun repairing these ruts. FMG further stated that it lays down plywood when heavy machinery needs to access the grounds, that Cemetery maintenance is inspecting these boards for damage, and that any damage caused by equipment will be repaired as soon as weather permits.

32. In response to the conditions of the grass on the grounds, FMG stated that two (2) pallets of sod had been laid covering a total of twenty-five (25) graves, and that four (4) gardens had been mowed and weed trimmed. FMG's questionnaire response did not address any permanent treatment to kill weeds and prevent future weed growth. FMG's questionnaire response did not address the condition of the Cemetery's roads.

CONCLUSIONS OF LAW

33. Paragraphs 1 through 32 are incorporated by reference as though fully set forth herein.

34. The Secretary has jurisdiction over this matter pursuant to the Act. *See* O.G.C.A. §§ 10-14-14 and 10-14-19.

35. Pursuant to O.C.G.A. § 10-14-19(a)(1) of the Act, if the Secretary determines:

that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter or by any rule, regulation, or order of the Secretary of State promulgated or issued pursuant to any Code section of this chapter or which is declared to be unlawful under this chapter, the Secretary of State may...[i]ssue an order, if he or she deems it to be appropriate in the public interest or for the protection of consumers, prohibiting such person from continuing such act, practice, or transaction, subject to the right of such person to a hearing as provided in Code Section 10-14-23.

36. Pursuant to O.C.G.A. § 10-14-19(f) the Secretary is authorized to impose a "civil penalty not to exceed \$10,000.00 for a single violation and not exceeding \$100,000.00 for multiple violations in a single proceeding or a series of related proceedings."

37. Respondent FMG is registered with the Division as a perpetual care cemetery pursuant to O.C.G.A. § 10-14-4. Thus, FMG is subject to discipline under the Act.

38. Pursuant to O.C.G.A. § 10-14-17(i), “[i]t shall be unlawful for any owner or operator of a perpetual care cemetery to fail to provide care and maintenance for the cemetery.”

39. Pursuant to O.C.G.A. § 10-14-3(6):

“Care and maintenance” means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well cared for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the Secretary of State, care and maintenance may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and clearing the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. Care and maintenance may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. Care and maintenance may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. Care and maintenance does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

40. Respondent FMG has engaged in a persisting and systemic failure to provide for care and maintenance for the Cemetery. FMG has not provided landscaping for the Cemetery grounds, including failing to properly treat the grounds for weeds and failing to properly mend barren areas in the grass. FMG has failed to take the proper measures to correct these care and maintenance issues.

41. FMG has further failed to provide for care and maintenance for the Cemetery by failing to repair and mend the ground from damage caused by allowing vehicles and other heavy machinery to drive across its grounds. FMG has failed to take the proper measures to correct these care and maintenance issues.

42. FMG has further failed to provide for care and maintenance for the Cemetery by failing to maintain the Cemetery’s road system and for its failure to repair potholes, fissures, and other deterioration and erosion in the road system. FMG has failed to take the proper measures to correct these care and maintenance issues.

43. FMG has further failed to provide for care and maintenance for the Cemetery by failing to keep its graves in a dignified condition by allowing graves to sink and become

bare, and has failed to provide remedial maintenance to return graves to a dignified condition. FMG has failed to take the proper measures to correct these care and maintenance issues.

44. FMG has further failed to provide for care and maintenance for the Cemetery by failing to repair damage caused to markers and headstones by FMG's care and maintenance staff. FMG has failed to take the proper measures to correct these care and maintenance issues.

45. FMG's response to the questionnaire does not assuage FMG's failure to provide care and maintenance. On the contrary, FMG's questionnaire response underscores the degree to which it has neglected to provide minimum care and maintenance to the Cemetery. FMG states that ruts on the grounds were caused by vehicles driven by visitors. This explanation is implausible. It is highly unlikely that visitors would drive across the grounds unless they were attempting to get around damaged areas in the road. The ruts shown in the Photos, however, do not run around damaged areas in the roads, and instead run across the Cemetery's grounds. Additionally, several of the tire marks across the grounds are inconsistent with passenger vehicles and are consistent with tractors or other commercial machinery.

46. Further, FMG's response fails to address the overall poor conditions of the Cemetery's care and maintenance. While FMG states that it has a process for addressing visitor complaints that includes a work order processing system and states actions it is taking to address care and maintenance issues now that the Division has inquired into their existence, but its response does not address the widespread care and maintenance issues at the Cemetery. FMG's response does not alleviate the fact that the overall condition of the grounds is barren with sandy soil, sinking around graves, damage to the road system, and damage to markers, all of which appear to have been neglected for an extensive period of time, as described in the findings of fact.

47. These activities described in paragraphs 41 through 46 are violations of O.C.G.A. § 10-14-17(i). These violations are actionable events pursuant to O.C.G.A. § 10-14-19; therefore, Respondent is subject to discipline.

ORDER

WHEREFORE, by the authority vested in me as the Secretary of State for the State of Georgia, **IT IS HEREBY ORDERED**:

1. That **FLORAL MEMORY GARDENS LLC** immediately **CEASE AND DESIST** all violations of the Georgia Cemetery and Funeral Services Act of 2000, as amended.

2. **FLORAL MEMORY GARDENS LLC** pay a **civil penalty** in the amount of one hundred thousand dollars (\$100,000.00).

3. **FLORAL MEMORY GARDENS LLC** remit payment of the Secretary's **cost of investigation** in the amount of one thousand five hundred dollars (\$1,500.00) to the Secretary due within thirty (30) days of the entry of a Final Order by the Secretary.

The entry of the Order is deemed to be in the public interest and shall not be deemed to constitute findings or conclusions relating to other persons unrelated to Respondent and shall not be deemed to be a waiver or estoppel on the part of the Secretary from proceeding in individual actions against any person who may have violated the Act or any transactions not specifically referred to herein or not known to the Secretary at the time this Order was issued.

SO ORDERED this ____ day of ____ 2021.

BOARD OF CEMETERIANS

BRAD RAFFENSPERGER
SECRETARY OF STATE

By: _____
Richard Parker
Chairman

By: _____
Noula Zaharis
Director
Securities and Charities Division